



Comptroller General
of the United States

Washington, D.C. 20548

John Miller

Decision

Matter of: Roofing Services Inc.

File: B-237595

Date: February 27, 1990

Ken Alton, for the protester.

Vasio Gianulias, Esq., Department of the Navy, for the agency.

Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that requirement for 5-year warranty for roofing services unduly restricts competition is denied where protester does not show that requirement exceeds agency's minimum needs and argues only that the 5-year warranty is difficult for bidders to provide.

DECISION

Roofing Services Inc. (RSI) protests the requirement that the contractor provide a 5-year warranty for work done under invitation for bids (IFB) No. N62474-89-B-6345, issued by the Navy for roof repairs and replacement at the Mare Naval Complex and Roosevelt Terrace, Vallejo, California, and the Naval Security Group Activity, Skaggs Island, Sonoma, California.

We deny the protest.

The IFB required a bid guarantee, as well as performance and payment bonds. The IFB also required the contractor to warrant for 5 years from the beneficial occupancy date that the built-up roofing system would be free of defective materials or workmanship. By letter dated October 13, 1989, RSI protested the warranty requirement to the Navy. RSI subsequently filed a protest with our Office on October 27, arguing that the warranty requirement unduly restricts competition. By letter dated October 30, the Navy informed RSI that the warranty clause would not be modified.

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The determination of the minimum needs of the government and the best methods for accommodating such needs, and the drafting of proper specifications which reflect these needs, are primarily the responsibility of the contracting agency, which is most familiar with the conditions under which the services or supplies have been and will be used. Radix II, Inc., B-209476, Mar. 1, 1983, 83-1 CPD ¶ 213. Although specifications should be drawn so as to maximize competition, we will not substitute our judgment for that of the contracting agency unless the protester shows that the agency's judgment was unreasonable. Id.

Here, RSI contends that the 5-year warranty requirement unduly restricts competition because of the difficulty bidders face in obtaining a surety who is willing to bond a contractor for a 5-year period. In support of its argument, RSI submitted a statement from a surety who maintains that in cases where contractors have secured a 5-year warranty, the guaranteeing sureties had either "made an exception . . . on the basis of a well-established and long-term relationship," or were "unaware that their obligations included a 5-year warranty." RSI also submitted a recent memorandum from a contracting officer on another Navy roofing contract recommending that such contracts be changed to require 1-year warranties from the contractor in combination with a 5-year manufacturer's warranty.

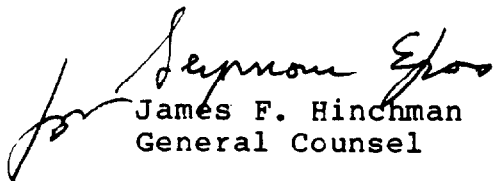
The Navy has long required a 5-year warranty as necessary to protect the government's interest and meet its minimum needs. See The Ellis Co., B-198833, Aug. 14, 1980, 80-2 CPD ¶ 118. Other than its submissions regarding the difficulty of obtaining a bond covering the 5-year warranty, RCI offers no evidence to show that the 5-year requirement exceeds the agency's minimum needs. A solicitation provision which may make it more difficult for a particular bidder to compete is not unduly restrictive of competition, so long as the requirement is reasonable and necessary for the purpose intended. Cleaver Brooks Division of Aqua-Chem, Inc., B-213323, June 12, 1984, 84-1 CPD ¶ 620. Further, the fact that, as RCI states, another contracting activity decided to require a more limited warranty for roofing services does not demonstrate that the contracting officer's decision in this case to include a 5-year warranty was unreasonable.

Moreover, in a similar case, we concluded that a 5-year warranty requirement did not unduly restrict competition where the solicitation clearly apprised bidders of their warranty obligations; bidders could include the estimated cost of complying with the warranty in their bid prices; and an average of over four bids were received in response to

each of several solicitations requiring a 5-year warranty. The Ellis Co., B-198883, supra. See also The Ellis Co., B-189390, B-189937, Jan. 27, 1978, 78-1 CPD ¶ 70. Here, in denying RCI's agency-level protest, the contracting officer noted that "a review of past solicitations containing the same warranty clause indicates adequate competition exists." In addition, the Navy states that eight bids were received under the current IFB, and that on four other recent solicitations, an average of nine bidders submitted bids without objection to the 5-year warranty requirement.

Since RCI has not shown that the 5-year warranty requirement exceeds the agency's minimum needs or unduly restricts competition, we see no basis to object to inclusion of the requirement in the IFB.

The protest is denied.


James F. Hinchman
General Counsel